

D.T.E. 00-84

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An investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charge set forth in the following tariff: M.D.T.E. 5, filed with the Department on November 1, 2000 by Westport Aqueduct Company.

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APPEARANCES: Benjamin C. Gifford, Treasurer

Westport Harbor Aqueduct Company

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Petitioner

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Department of Telecommunications and Energy

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FOR: DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY SETTLEMENT  
INTERVENTION STAFF

Intervenors

## I. INTRODUCTION

On October 21, 2000, Westport Harbor Aqueduct Company ("Westport Harbor" or "Company") filed for new rates and charges with the Department of Telecommunications and Energy ("Department") pursuant to G. L. c. 164, § 94 and c. 165 § 2. Westport Harbor is seeking to increase each residential customer's annual rate from \$275 to \$350.<sup>(1)</sup> This would be an increase of 27.9 percent from the current rates which became effective on January 1, 1994. By an Order dated November 7, 2000, the Department suspended the effective date of the proposed tariffs until July 1, 2001, in order to investigate the propriety of the rates sought by the Company. On

November 17, 2000, the Department appointed Settlement Intervention Staff ("Staff" or "SIS") to facilitate a negotiated settlement of some or all of the issues present in the case ("SIS Appointment").<sup>(2)</sup>

On January 18, 2001, the Department held a public hearing in the Town of Westport to provide interested persons an opportunity to be heard on the proposed rates.<sup>(3)</sup> At the public hearing, no ratepayers appeared in opposition of the rate increase.<sup>(4)</sup> Also, on this date, the Department, SIS, and the Company conducted a site visit of the Company's facilities.

The Company and Staff held settlement negotiations. On March 8, 2001, Westport Harbor and Staff filed a Joint Motion for Approval of Offer of Settlement ("Motion") and Offer of Settlement ("Settlement") with the Department to resolve all issues in D.T.E. 00-84. The Motion also requested that the Department move into the record the Company's initial filing and responses to six SIS information requests.

## II. PROPOSED SETTLEMENT

The Settlement's terms are intended to resolve all issues in D.T.E. 00-84 and the Settlement is expressly conditioned upon the Department's acceptance of all provisions therein, without change or condition, on or before March 22, 2001 (Settlement at 6). The Settlement's provisions, including the proposed new rates and changes, have an effective date of March 22, 2001, subject to the Department's approval of the Settlement (id. at 5).

Under the terms of the proposed Settlement, the parties agree that the additional annual revenue shall be \$4,557 and the overall rate of return shall be 11.5 percent based on a capital structure consisting of 100 percent common equity and a rate of return on the common equity of 11.5 percent (Settlement at 3). The parties also agree that the Company's proposed tariff shall go into effect (id.). The parties further agree that the Company shall book deferred income tax to Account 320 as was specified in Article 2.4 of the stipulation reached in Westport Harbor Aqueduct Company, D.P.U. 90-222 (1990) (id.).<sup>(5)</sup>

The parties agree that the Department's approval of the schedules attached to the Settlement shall not be accorded precedential value in future Department proceedings (id. at 6).

## III. STANDARD OF REVIEW

The Department instituted the settlement intervention process to reduce administrative costs incurred by small water companies and their ratepayers in adjudicating rate cases. East Northfield Water Company, D.T.E. 98-127, at 3 (1999). Generally, in order to approve a settlement, the Department must find that the settlement offer is complete, acceptable and results in just and reasonable rates. Barnstable Water Company, D.P.U. 90-87 at 3 (1990).

In assessing the reasonableness of the settlement and the revenue increase reflected in it, the Department must review the entire record presented in the Company's filing and other record evidence to ensure that the settlement is consistent with the public interest. Plymouth Water Company, D.P.U. 91-254, at 4 (1992); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Cambridge Electric Light Company, D.P.U. 89-109, at 5 (1989); Southbridge Water Supply Company, D.P.U. 89-25 (1989); Eastern Edison Company, D.P.U. 88-100, at 9 (1989).

#### IV. ANALYSIS AND FINDINGS

The Department moves into the record the Company's initial filing and responses to the SIS information requests provided during the course of the proceeding. The Department has evaluated the provisions of the Settlement and the Company's proposed revenue increase in light of the information submitted by the Company in its original filing, its response to the Staff's information requests and the schedules attached to the proposed Settlement.

As the Company and SIS note, the Company's initial filing supports a revenue deficiency of at least \$4,557, the full amount sought by the Company. Moreover, a significant portion of the rate increase granted under this Settlement is attributed to: (1) the need to hire a part-time employee to oversee the safety of the Company's system (Exh. DTE-SIS-1-5); (2) increased water testing requirements to comply with state and federal drinking water requirements and to ensure public safety (Exh. DTE-SIS-1-2; DTE-SIS-1-3); and (3) ongoing maintenance expenses arising from the elevated sodium content of the Company's water supply by virtue of the proximity of the Company's wells to Cockeast Pond (Exh. DTE-SIS-1-1; Settlement, Sch. 12).<sup>(6)</sup>

The Department notes the lack of any expressed customer opposition to the requested rate increase at the public hearing. The Department finds that the Settlement submitted is complete, acceptable and results in just and reasonable rates. Therefore, the Department approves the Settlement, including the proposed new tariff M.D.T.E. 5. In accordance with terms of this Settlement, acceptance of the Settlement by the Department does not constitute a determination as to the merits of any allegations, contentions or arguments made in this proceeding.

#### V. ORDER

After due notice, hearing and consideration, it is

ORDERED: that the Joint Motion for Approval of Offer of Settlement the filed by Westport Harbor Aqueduct Company and the Settlement Intervention Staff is granted; and it is

FURTHER ORDERED: that Westport Harbor Aqueduct Company's tariff, M.D.T.E. 5 is approved for water consumption on or after March 22, 2001.

By order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeals as to matter of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Westport Harbor also is seeking to increase the rate for the Elephant Rock Beach Club, its sole commercial customer from \$825 to \$1,050 annually.

2. The Department established the SIS process by memorandum dated June 4, 1990, in order to promote negotiated settlements and to formalize institutional representation of rate payers in water company proceedings.

3. In addition to notice by publication, the Department ordered Westport Harbor to send each customer individual notice by first class mail.

4. Members of the Westport Harbor Board of Directors, who are customers, appeared but are in favor of the rate increase.

5. D.P.U. 90-222 at 2, states in relevant part that:

"... the parties agree that the Company shall establish a deferred income tax reserve on its books, which shall be implemented with Account 320, Other Reserves (Settlement at 4) The Company shall book to this account each year the difference between its tax and book depreciation, multiplied by the Company's then-effective income tax rate."

6. Westport Harbor appears to be in compliance with the Federal Safe Drinking Water Act, 42 U.S.C. 300f et seq (see Exh. DTE-SIS-1-1, Schedule 12).